

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/789,967
Inventor(s) : Joseph Anthony Gatto et al.
Filed : February 27, 2004
Art Unit : 1614
Examiner : Anna Pagonakis
Docket No. : 8725R2R
Confirmation No. : 9429
Customer No. : 27752
Title : SANITARY NAPKINS WITH HYDROPHOBIC
LOTIONS

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

INTRODUCTORY REMARKS

In response to the Office Action of April 2, 2009, Applicants are filing herewith a Notice of Appeal and respectfully request review of the present application before the filing of an appeal brief.

Status of the Claims

Claims 11-18 and 20-27 are pending in the application.

Claims 11-18 and 20-27 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention.

Claims 11-18 and 20-25 have been rejected under the doctrine of obviousness-type double patenting as being unpatentable over Claims 1-22 of U.S. Application No. 10/992,383.

Ground of Rejection for Review

Applicants respectfully submit that Claims 11-18 and 20-27 are definite and patentable under 35 U.S.C. §112, second paragraph. Applicants further submit that the obviousness-type double patenting rejection is now overcome, as Applicants are submitting herewith a Terminal Disclaimer to obviate the rejection.

Rejection Under 35 U.S.C. §112

Claims 11-18 and 20-25 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to distinctly claim the invention. Applicants respectfully traverse this rejection. The Office Action asserts that the terms “from about”, “at least about”, and “less than about” are not defined in the claim and the specification does not provide a standard for ascertaining the requisite degree and one skilled in the art would not be reasonably apprised of the scope of the invention. Applicants point out that such claim terms are commonly used in defining numerical ranges, especially in the chemical arts. Applicants submit that one of ordinary skill in the art would understand the scope of the invention from these claim terms based on the common use of these terms in claim drafting, the nature of chemical inventions, and the specification of the present invention. See MPEP §§2173.05(b)(A) and 2173.05(c)(II); see also, *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983). The claim limitations relating to temperature and average droplet size are parameters commonly measured by those of skill in the art. One of skill in the art in making such measurements would recognize the potential for a certain amount of variability in such measurements and as a result would understand the meaning of the claim language “from about”, “at least about” and “less than about” as used in the present claims. Furthermore, the “about”, “at least about” and “less than about” language was utilized in the specification and claims as originally filed. Applicants therefore submit that this rejection should be withdrawn.

Obviousness-Type Double Patenting Rejection

Claims 11-18 and 20-25 have been provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over Claims 1-22 of U.S. Application No. 10/992,383. Applicants are submitting herewith a Terminal Disclaimer to obviate this rejection. Therefore, Applicants submit that this rejection is now overcome.

Appl. No. 10/789,967
Docket No. 8725R2R
Pre-Appeal Brief Request for Review dated July 2, 2009
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Conclusion

In view of the foregoing remarks, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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Date: July 2, 2009
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